



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

to furnish the least temptation to sacrifice the interest of another that he may act for both. The principal case seems very doubtful, and certainly extends the doctrine to its extreme limit.

CONTRACTS—PARTIAL PERFORMANCE—QUANTUM MERUIT.—The plaintiff contracted to drive a well for the defendant, but failed to fully and substantially perform the contract. The defendant having accepted the incomplete work, the plaintiff sued to recover on a *quantum meruit* for services actually performed. *Held*, the plaintiff can recover. *Hartwell v. Turner* (Ala.), 71 South. 658.

The principles laid down by the courts in cases of this kind are varied and irreconcilable. That there can be no recovery on the contract is generally conceded; but there is a conflict as to the right of recovery on a *quantum meruit* for the value of services actually performed. Some courts deny the plaintiff's right to recover on a *quantum meruit*; while others hold that he may recover; and, others give a qualified answer, varying accordingly as the contract is general or special, or whether the abandonment of the plaintiff was or was not willful. Thus, a majority of the older cases hold that where the contract is entire that the plaintiff must stand by the contract; and, when the abandonment is due to failure on his part he should not recover, even for the labor actually performed. *McMillan v. Vanderlip*, 12 Johns (N. Y.) 165, 7 Am. Dec. 299; *Stark v. Parker*, 2 Pick. (Mass.) 267, 13 Am. Dec. 425; *Jennings v. Camp*, 13 Johns. (N. Y.) 94, 7 Am. Dec. 367. The majority of the English decisions follow the same doctrine. *Waddington v. Oliver*, 2 Bos. & Pul. (N. R.) 61; *Ellis v. Hamlen*, 3 Taunt. 52; *Cutter v. Powell*, 6 Term. R. 320. That such a rule in its operation may be very unjust is apparent; and this doctrine, emphasizing the technical unity and entirety of contracts, is not favored by many of the modern courts, which hold that the plaintiff may recover on a *quantum meruit* the reasonable value of services actually rendered. *Britton v. Turner*, 6 N. H. 481, 26 Am. Dec. 713; *McClay v. Hedge*, 18 Iowa 66; *Hillyard v. Crabtree's Adm'r*, 11 Tex. 264, 62 Am. Dec. 475; *McDonough v. Evans Marble Co.*, 50 C. C. A. 403, 112 Fed. 634; *Watson v. Kirby*, 112 Ala. 436, 20 South. 624. Some courts refuse recovery on a *quantum meruit* when the contract is a special one. See *Taft v. Montague*, 14 Mass. 282, 7 Am. Dec. 215. And some cases hold that where one willfully defaults in the substantial performance of an entire contract, he cannot recover for part performance, though the other party be not damaged by the default. *Hartman v. Meighan*, 171 Pa. 46, 33 Atl. 123; *Kohn v. Fendel*, 29 Minn. 470, 13 N. W. 904.

It would seem, though the weight of authority now appears to be against it, that the employee should recover without qualification for the services he actually rendered. He recovers for benefits conferred upon the employer, who should not be allowed to enjoy such benefits without paying their reasonable worth. Nor does such a doctrine contravene public policy; because the employee can gain nothing from the breach of his contract, and such a breach imposes upon him all losses occasioned thereby. And the fullest remedy is afforded the em-

ployer for the wrong he suffers by awarding him compensatory damages for the breach. *Britton v. Turner*, *supra*.

**DAMAGES—MENTAL ANGUISH—FAILURE TO DELIVER COFFIN.**—The defendant negligently failed to deliver a coffin ordered by the plaintiff in time for the burial. Full compensation was made for the pecuniary loss occasioned by the delay, and this suit is brought to recover for the mental anguish caused the plaintiff. *Held*, there can be no recovery. *Southern Express Co. v. Byers*, 36 Sup. Ct. Rep. 410.

There has been much confusion and uncertainty in the decisions as to whether one can recover for the mental anguish occasioned by the breach of a contract. It has been held that mental anguish is not a proper element of damages in such cases. *Beaulieu v. Great Northern R.*, 103 Minn. 47, 114 N. W. 353, 19 L. R. A. (N. S.) 564. Where one is advised of the importance of a contract and the damages which will result from its breach, such resulting damages are recoverable. *Hadley v. Baxendale*, 9 Exch. 341. It would seem to follow that where the contract is of such a nature that mental suffering would naturally result from its breach, the mental suffering would constitute a proper element of damages. *Cumberland T. & T. Co. v. Quigley*, 129 Ky. 788, 112 S. W. 897, 19 L. R. A. (N. S.) 575. When other than pecuniary benefits are contracted for, other than pecuniary standards should be applied in ascertaining the damages resulting from the breach. See *Wadsworth v. W. U. Tel. Co.*, 86 Tenn. 695, 8 S. W. 574. And even those courts which deny the right to recover for mental anguish recognize a supposed exception to the rule in the case of a breach of promise of marriage, which naturally results in some injury to the feelings, and which is an action sounding in tort. *Coolidge v. Neat*, 129 Mass. 146. And it has been held that one can recover for the mental anguish occasioned by the delay in the transportation of a corpse. *Hale v. Bonner*, 82 Tex. 33, 17 S. W. 605, 14 L. R. A. 336, 27 Am. St. Rep. 850.

The point involved in the principal case has been most frequently discussed in cases where there was a failure to promptly deliver a telegram announcing the death or sickness of a near relative. The courts are sharply divided on the right of one to recover for the mental suffering occasioned by such delay—the federal courts and a majority of the state courts deny any such right. *W. U. Tel. Co. v. Choteau*, 28 Okla. 664, 115 Pac. 879, Ann. Cas., 1912D, 824, 49 L. R. A. (N. S.) 206. These decisions are based on the ground that there can be no recovery for mental anguish at common law; and, chiefly, on the further ground that it would be impossible to ascertain the extent of the damage, thus opening the door to fraud. *W. U. Tel. Co. v. Choteau*, *supra*. Once granting, however, that mental anguish was suffered, and from the very nature of the transaction it would seem that mental suffering would be occasioned by the delay, it does not seem that a recovery can be denied on the ground that the damage was uncertain. There are many cases in which the law gives damages when it is impossible to ascertain with certainty the extent of the damage suffered, e. g., recoveries for personal injuries. *Richmond Ry. & Electric Co. v. Garthright*, 92 Va. 627, 24 S. E. 267. Mental